

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7783 OF 2005

Sunil Pramod Pawar & anr. Applicants

versus

The State of Maharashtra Respondent

Pranlai Kakade for applicant.

K.V.Saste, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th December 2005

PC :

1. The applicants along with eight others have been charged by the Paud Police Station vide C.R.No.75/2005 with offences punishable under section 395 of IPC..

2. The company which is producing Copper tubes and bye-metal copper parts has its factory premises at the address mentioned more particularly in the C.R.. At the factory premises, two watchmen are placed in-charge of the security. On 16th August 2005 about 8 to 10 unknown persons with faces covered entered the

factory premises. One of them was holding a sword in his hand while others were armed with iron pipe, wooden stick etc.. The complainant was threatened and is assaulted. Security personnel locked and thereafter copper coils worth Rs.2,85,220/- were removed, subsequently disposed off and proceeds appropriated.

3. The submission of Ms.Kakde in support of this application is that one Appa @ Arjun Sable who is similarly placed as the present applicants, has been enlarged on the bail by the Pune Sessions Court. Applying principles of parity, the present applicant deserves to be enlarged on bail. Moreso, when one of the applicants namely Sunil Pawar has not been identified in the identification parade.

4. The submission of Shri Saste - learned APP is that there cannot be any question of parity as far as present applicants are concerned because at their instance recoveries have been made. One Sumo Vehicle which was used in the crime and a weapon namely sword which was used for assaulting the watchmen on duty, has also been recovered. He invites my attention to the order passed by the Sessions Court in this behalf.

5. On perusal of the said order, it is clear that the complaint was lodged by the watchmen/security personnel on duty together with the officers of the company. It is alleged that the accused thereafter sold the stolen property to one Timir Singhvi. A statement of truck owner is recorded in which the stolen goods were transported from the company to the premises of purchaser. It is alleged that one sword, knife and iron pipe has been recovered at the instance of accused Sunil Pawar. Further role which is attributed is that these accused along with others were distributing the amount of Rs.3.00 lakh amongst themselves. It is on the basis of the aforesaid that the Sessions Judge rejected the application.

6. Upon perusal of the relevant materials, in my view, considering that the applicants have also been allegedly involved in the same offence and charged with identical role as that of one of the co-accused, the question of application of parity would arise. It is not as if the other persons have not been identified and yet detained in custody. In the present application it is specifically averred in para no.4(D) that

applicant no.1 was not identified at the identification parade, whereas, Appa @ Arjun Sabale was identified. The said Appa @ Arjun Sabale has been enlarged on bail. This aspect has not been considered by the Trial Court.

7. In these circumstances, the applicants deserve to be enlarged on bail, of course, with stringent conditions.

8. It has been brought to the notice of Ms.Kakade appearing for the applicants that the residential address/business address set out in the application is vague. There are no particulars forth coming. There is no proof that the applicants are actually residing or carrying on business from these premises. Therefore, the applicants cannot be released unless the proof of their permanent place of residence within Pune City, as stated, is furnished in support of the pleas raised in the present application. While it is true that the applicants have no antecedents, yet, it is also necessary that the accused such as the applicants remain present and co-operate in the Trial. In these circumstances, the applicants shall not be released unless they furnish the necessary proof of their residence

and/or business being carried out by them within the City limits of Pune. The said particulars be furnished before their release and the Investigating Officer is at liberty to verify the contents thereof.

9. Hence following order :-

(i) The applicants shall be enlarged on bail in connection with C.R.No.75/2005 registered with Paud Police Station, Pune subject to furnishing a personal bond of Rs.15,000/- each with one or two local solvent surety in the like sum;

(ii) Before release of applicants, the applicants shall submit their permanent residence proof and the Investigating Officer shall verify the permanent address of applicants (residential/business);

(iii) The applicants shall attend Paud Police Station, Pune twice a week on every Monday and Thursday between 05.00 to 07.00 p.m. till trial is concluded;

(iv) The bail is granted subject to condition that the applicant shall not, directly or

indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(v) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(vi) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vii) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)